

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

Tyrone Lucas, #217644,

C.A. No. 0:05-2007-TLW-BM

Plaintiff,

VS.

ORDER

WILLIE LEE EAGLETON, Warden of Evans Correctional Institution; ROLAND McFADDEN, Associate Warden of Evans Correctional Institution; TINA CRIB, Employee at Evans Correctional Institution; ANNIE McCORMICK-SELLERS, Captain at Evans Correctional Institution; MARY WILLIAMSON, Employee at Evans Correctional Institution; NFN MOULTRIE, Sergeant at Evans Correctional Institution; and ROBIN CHAVIS, Employee at Evans Correctional Institution,

Defendants.

The *pro se* plaintiff, an inmate at the South Carolina Department of Corrections, filed an action on July 19, 2005, pursuant to 42 U.S.C. § 1983, alleging that the defendants have violated his constitutional rights. (Doc. # 1). On October 28, 2005, the defendants Crib and Williamson filed a motion to dismiss pursuant to Fed.R.Civ.P. 12(b)(5) and 12(b)(2), citing lack of service of process. (Doc. #17). Pursuant to Roseboro v. Garrison, 528 F.2d 309 (4th Cir. 1975), the plaintiff was advised by order filed October 28, 2005 that he had thirty-four (34) days to file any material in opposition to the motion to dismiss. (Doc. #19). The plaintiff informed the court in a letter filed on December 14, 2005 that defendants Crib and Williamson are no longer employed at Evans Correctional Institution. (Doc. #31). The plaintiff asked the court for assistance to execute service as to these two

defendants. (Doc. #31).

This matter is now before the undersigned for review of the Report and Recommendation (“the Report”) filed by United States Magistrate Judge Bristow Marchant, to whom this case had previously been assigned pursuant to 28 U.S.C. § 636(b) and Local Rule 73.02(B)(2) (D.S.C.). In his Report, Judge Marchant recommends that the defendants’ motion to dismiss be denied and that further service be attempted by the United States Marshal if defense counsel could not accept service as to the missing defendants. (Doc. #32). The defendants filed a return to the Report and Recommendation on January 25, 2006 informing the court that efforts to contact the other defendants were made without success and that they could not accept service on behalf of defendants Crib and Williamson. (Doc. # 37).

In conducting this review, the Court applies the following standard:

The magistrate judge makes only a recommendation to the Court, to which any party may file written objections. . . . The Court is not bound by the recommendation of the magistrate judge but, instead, retains responsibility for the final determination. The Court is required to make a de novo determination of those portions of the report or specified findings or recommendation as to which an objection is made. However, the Court is not required to review, under a de novo or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the Report and Recommendation to which no objections are addressed. While the level of scrutiny entailed by the Court's review of the Report thus depends on whether or not objections have been filed, in either case, the Court is free, after review, to accept, reject, or modify any of the magistrate judge's findings or recommendations.

Wallace v. Housing Auth. of the City of Columbia, 791 F.Supp. 137, 138 (D.S.C. 1992) (citations omitted).

In light of this standard, the Court has reviewed, de novo, the Report and the return, thereto.

The Court accepts the Report.

THEREFORE, IT IS HEREBY ORDERED that the Magistrate Judge’s Report is **ACCEPTED** (Doc. # 32), and the defendants’ motion to dismiss is **DENIED** (Doc. #17). The

United States Marshal is directed to use all reasonable efforts to personally serve the defendants Tina Crib and Mary Williamson at their places of business or residence.

IT IS SO ORDERED.

S/ Terry L. Wooten
TERRY L. WOOTEN
UNITED STATES DISTRICT JUDGE

June 7, 2006
Florence, South Carolina